

PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

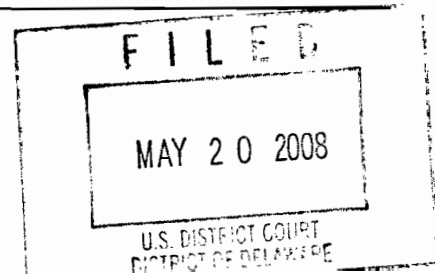
United States District Court		District OF DELAWARE
Name (under which you were convicted): ELTON LEROY PUMPHREY		Docket or Case No.: 0002014519
Place of Confinement: D.C.C. 1181 PADDOCK ROAD SMYRNA, DEL. 19977	Prisoner No.: 185250	
Petitioner (include the name under which you were convicted) Respondent (authorized person having custody of petitioner) ELTON LEROY PUMPHREY v. STATE OF DELAWARE		
The Attorney General of the State of DELAWARE		

PETITION

1. (a) Name and location of court that entered the judgment of conviction you are challenging: SUPERIOR COURT, SUSSEX COUNTY COURTHOUSE
1 THE CIRCLE, SUITE #2, GEORGETOWN, DELAWARE 19947
 (b) Criminal docket or case number (if you know): 0002014519
2. (a) Date of the judgment of conviction (if you know): 10/26/2000
 (b) Date of sentencing: 12/15/2000
3. Length of sentence: 5 YEARS
4. In this case, were you convicted on more than one count or of more than one crime? Yes ☒ No ☐
5. Identify all crimes of which you were convicted and sentenced in this case: THEFT OVER \$1,000 (F)
CONSPIRACY and (F)
AUTH FOR PHO FP (M)
6. (a) What was your plea? (Check one)

(1) Not guilty <input checked="" type="checkbox"/>	(3) Nolo contendere (no contest) <input type="checkbox"/>
(2) Guilty <input type="checkbox"/>	(4) Insanity plea <input type="checkbox"/>

 (b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to? NOT GUILTY TO ALL CHARGES.



(c) If you went to trial, what kind of trial did you have? (Check one)

Jury ☒ Judge only ☐

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

Yes ☐ No ☒

8. Did you appeal from the judgment of conviction?

Yes ☒ No ☐

9. If you did appeal, answer the following:

(a) Name of court: THE SUPREME COURT OF DELAWARE

(b) Docket or case number (if you know): 0002014519

(c) Result: DENIED

(d) Date of result (if you know): 1/19/2002

(e) Citation to the case (if you know): NO. 4, 2001

(f) Grounds raised: SEE ATTACHED EXHIBIT (1)

(g) Did you seek further review by a higher state court? Yes ☐ No ☒

If yes, answer the following:

(1) Name of court: N/A

(2) Docket or case number (if you know): N/A

(3) Result: N/A

(4) Date of result (if you know): N/A

(5) Citation to the case (if you know): N/A

(6) Grounds raised: N/A

(h) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☒

If yes, answer the following:

(1) Docket or case number (if you know): N/A

(2) Result: N/A

(3) Date of result (if you know): N/A

(4) Citation to the case (if you know): N/A

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court?

Yes ☒ No ☐

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: SUPERIOR COURT, SUSSEX COUNTY, DELAWARE

(2) Docket or case number (if you know): 0002014519

(3) Date of filing (if you know): 7/18/05

(4) Nature of the proceeding: POSTCONVICTION RELIEF MOTION

(5) Grounds raised: (1) PETITIONERS SIXTH AMENDMENT RIGHT TO CONFRONT ACCUSATORY WITNESSES WERE VIOLATED DURING HIS TRIAL. (2) DEFENDANT'S CONVICTION FOR CONSPIRACY IS INVALID ABSENT A CONVICTION FOR THE UNDERLYING OVERT ACT OF ROBBERY. (3) DEFECTIVE AND/OR IMPROPER JURY INSTRUCTIONS. (4) DEFENDANT WAS DENIED HIS SIXTH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL DURING TRIAL.

(6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes ☐ No ☒

(7) Result: DENIED

(8) Date of result (if you know): 10/17/2006

- (b) If you filed any second petition, application, or motion, give the same information:

(1) Name of court: N/A

(2) Docket or case number (if you know): N/A

(3) Date of filing (if you know): N/A

(4) Nature of the proceeding: N/A

(5) Grounds raised: N/A

(6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes ☐ No ☒

(7) Result: N/A

(8) Date of result (if you know): N/A

(c) If you filed any third petition, application, or motion, give the same information:

(1) Name of court: N/A

(2) Docket or case number (if you know): N/A

(3) Date of filing (if you know): N/A

(4) Nature of the proceeding: N/A

(5) Grounds raised: N/A

(6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes ☐ No ☒

(7) Result: N/A

(8) Date of result (if you know): N/A

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

(1) First petition: Yes ☒ No ☐

(2) Second petition: Yes ☐ No ☐

(3) Third petition: Yes ☐ No ☐

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not:

N/A

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE: SEE ATTACHED MEMORANDUM AND EXHIBIT (1), PAGES B-8 THRU B-22 FOR "IN JUDGES CHAMBER TRANSCRIPTS?"

- (a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

- (b) If you did not exhaust your state remedies on Ground One, explain why: _____

- (c) Direct Appeal of Ground One:

- (1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

- (2) If you did not raise this issue in your direct appeal, explain why: MY DEFENSE COUNSEL BEING INEFFECTIVE AND MISCONDUCT DURING TRIAL, OF WHICH HE DIDN'T APPEAL BECAUSE OF HIS OWN INEFFECTIVENESS.

- (d) Post-Conviction Proceedings:

- (1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes ☒ No ☐

- (2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: POSTCONVICTION RELIEF MOTION

Name and location of the court where the motion or petition was filed: SUPERIOR COURT, 1 THE CIRCLE, SUITE #2, GEORGETOWN, DELAWARE 19947

Docket or case number (if you know): 0002014519

Date of the court's decision: 10/17/2006

Result (attach a copy of the court's opinion or order, if available): DENIED

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion or petition?

Yes ☒ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☒

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: SUPREME COURT OF DELAWARE, P.O. BOX 476, DOVER, DELAWARE 19903

Docket or case number (if you know): NO. 580, 2006

Date of the court's decision: 10/23/07 AND REHEARING EN BANC 11/15/07

Result (attach a copy of the court's opinion or order, if available): DENIED

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this

issue: I APPEALED THERE DECISION NOT TO ADDRESS MY ISSUES, I DIDN'T SPECIFY MY ISSUES BECAUSE THEY FAILED TO ADDRESS MY ISSUES AND STATED I DON'T HAVE STANDING TO PURSUE MY CLAIM UNDER SUPERIOR COURT RULE 61, WHEN IN FACT I DID AT THE TIME I FILED ON (7-18-05)

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One: N/A

GROUND TWO: SEE ATTACHED MEMORANDUM AND EXHIBIT (2).

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) If you did not exhaust your state remedies on Ground Two, explain why: _____

(c) **Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: MY DEFENSE COUNSEL BEING INEFFECTIVE AND MISCONDUCT DURING TRIAL, OF WHICH HE DID NOT APPEAL BECAUSE OF HIS OWN INEFFECTIVENESS.

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes ☒ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: POSTCONVICTION RELIEF MOTION

Name and location of the court where the motion or petition was filed: SUPERIOR COURT, 1 THE CIRCLE, SUITE #2, GEORGETOWN, DELAWARE 19947

Docket or case number (if you know): 0002014519

Date of the court's decision: 10/17/2006

Result (attach a copy of the court's opinion or order, if available): DENIED

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion or petition?

Yes ☒ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☒

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: SUPREME COURT OF DELAWARE, P.O. BOX 476, DOVER, DELAWARE 19903

Docket or case number (if you know): NO. 580, 2006
Date of the court's decision: 10/23/07 AND REHEARING EN BANC 11/15/07
Result (attach a copy of the court's opinion or order, if available): DENIED

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: I APPEALED THERE DECISION NOT TO ADDRESS MY ISSUES. I DIDN'T SPECIFY MY ISSUES BECAUSE THEY FAILED TO ADDRESS MY ISSUES AND STATED I DON'T HAVE STANDING TO PURSUE MY CLAIM UNDER SUPERIOR COURT RULE 61, WHEN IN FACT I DID AT THE TIME I FILED ON [7-18-05].

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two: N/A

GROUND THREE: SEE ATTACHED MEMORANDUM

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) If you did not exhaust your state remedies on Ground Three, explain why:

(c) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: MY DEFENSE COUNSEL BEING INEFFECTIVE AND MISCONDUCT DURING TRIAL, OF WHICH HE DID NOT APPEAL BECAUSE OF HIS OWN INEFFECTIVENESS.

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes ☒ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: POSTCONVICTION RELIEF MOTION

Name and location of the court where the motion or petition was filed: SUPERIOR COURT, 1 THE CIRCLE, SUITE #2, GEORGETOWN, DELAWARE 19947

Docket or case number (if you know): 0002014519

Date of the court's decision: 10/17/2006

Result (attach a copy of the court's opinion or order, if available): DENIED

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion or petition?

Yes ☒ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☒

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: SUPREME COURT OF DELAWARE, P.O. BOX 476, DOVER, DELAWARE 19903

Docket or case number (if you know): NO. 580, 2006

Date of the court's decision: 10/23/07 AND REHEARING EN BANC 11/15/07

Result (attach a copy of the court's opinion or order, if available): DENIED

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

I APPEALED THERE DECISION NOT TO ADDRESS MY ISSUES. I DIDN'T SPECIFY MY ISSUES BECAUSE THEY FAILED TO ADDRESS MY ISSUES AND STATED I DON'T HAVE STANDING TO PURSUE MY CLAIM UNDER SUPERIOR COURT RULE 61, WHEN IN FACT I DID AT THE TIME I FILED ON [7-18-05].

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three: N/A

GROUND FOUR: SEE ATTACHED MEMORANDUM

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) If you did not exhaust your state remedies on Ground Four, explain why: _____

(c) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: DUE TO DEFENSE COUNSEL'S INEFFECTIVENESS DURING TRIAL AND APPEAL HE DIDN'T RAISE ISSUE.

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes ☒ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: POSTCONVICTION RELIEF MOTION

Name and location of the court where the motion or petition was filed: SUPERIOR COURT, 1 THE CIRCLE, SUITE #2, GEORGETOWN, DELAWARE 19947

Docket or case number (if you know): 0002014519

Date of the court's decision: 10/17/2006

Result (attach a copy of the court's opinion or order, if available): DENIED

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion or petition?

Yes ☒ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☒

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: SUPREME COURT OF DELAWARE, P.O. BOX 476, DOVER, DELAWARE 19903

Docket or case number (if you know): NO. 580, 2006

Date of the court's decision: 10/23/07 AND REHEARING EN BANC 11/15/07

Result (attach a copy of the court's opinion or order, if available): DENIED

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: I APPEALED THERE DECISION NOT TO ADDRESS MY ISSUES. I DIDN'T SPECIFY MY ISSUES BECAUSE THEY FAILED TO ADDRESS MY ISSUES AND STATED I DON'T HAVE STANDING TO PURSUE MY CLAIM UNDER SUPERIOR COURT RULE 61, WHEN IN FACT I DID AT THE TIME I FILED ON [7-18-05].

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four: N/A

13. Please answer these additional questions about the petition you are filing:

(a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? Yes ☒ No ☐

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them: N/A

(b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: N/A

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available. N/A

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. N/A

16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: M. BURKE, ESQ, TIMOTHY G. WILLARD, ESQ OR RONALD PHILLIPS, ESQ, Addresses Georgetown, DE. 19947.

(b) At arraignment and plea: ARRAIGNMENT RONALD PHILLIPS, ESQ AND PLEA THOMAS D. BARNETT, ESQ, Addresses Georgetown, DE. 19947.

(c) At trial: THOMAS D. BARNETT, ESQ
512 EAST MARKET STREET, GEORGETOWN, DE. 19947.

(d) At sentencing: THOMAS D. BARNETT, ESQ
512 EAST MARKET STREET, GEORGETOWN, DE. 19947.

(e) On appeal: THOMAS D. BARNETT, ESQ
512 EAST MARKET STREET, GEORGETOWN, DE. 19947

(f) In any post-conviction proceeding: PRO SE, ELTON L. PUMPHREY

(g) On appeal from any ruling against you in a post-conviction proceeding: PRO SE,
ELTON L. PUMPHREY

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: _____

(b) Give the date the other sentence was imposed: _____

(c) Give the length of the other sentence: _____

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? Yes ☐ No ☐

18. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.* N/A

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2244(d) provides in part that:

- (1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of —

(continued...)

Therefore, petitioner asks that the Court grant the following relief: PETITIONER
ASKS THE COURT TO VACATE HIS
CONVICTION.

or any other relief to which petitioner may be entitled.

Elton Pumphrey (Pro se)
Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct
and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on
5/18/2008 (month, date, year).

Executed (signed) on 5/18/2008 (date).

Elton Pumphrey
Signature of Petitioner

*(...continued)

- (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
 - (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;
 - (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
 - (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.
- (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing this petition. N/A

IN FORMA PAUPERIS DECLARATION
UNITED STATES DISTRICT COURT
[Insert appropriate court]

* * * * *

IN: ELTON L. PUMPHREY
SBI# 185250 UNIT 17-A-L-11

DELAWARE CORRECTIONAL CENTER
1181 PADDOCK ROAD
SMYRNA, DELAWARE 19977



U.S. MAIL
FIRST CLASS

UNITED STATES DISTRICT COURT
844 NORTH KING STREET
LOCK BOX 18
WILMINGTON, DELAWARE
19801

LEGAL MAIL